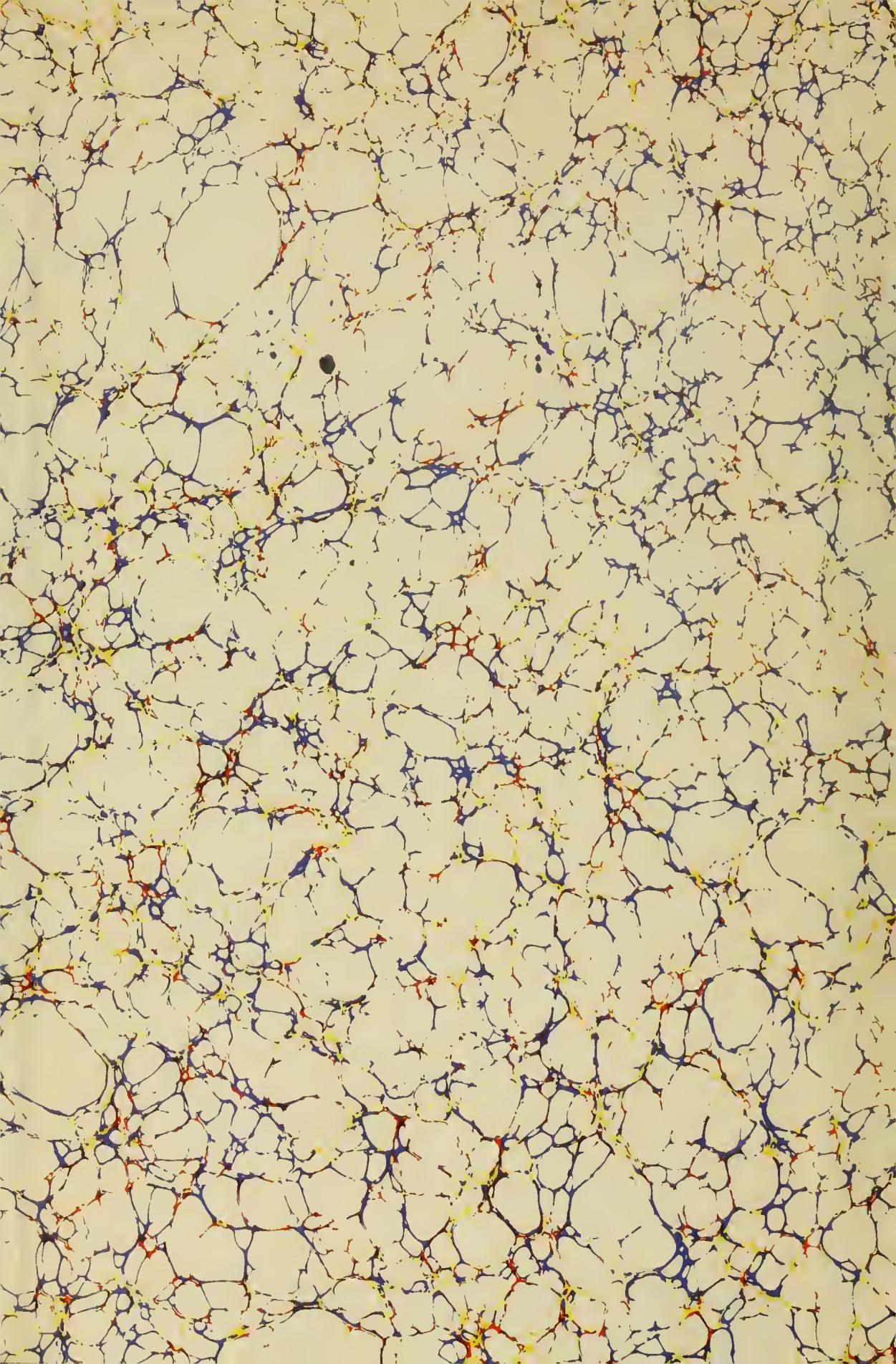


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TREASURY DEPARTMENT

[CONFIDENTIAL COMMITTEE PRINT]

JUNE 24, 1935

74TH CONGRESS
1ST SESSION

5

H. R. 8539

IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 1935

Mr. DOUGHTON introduced the following bill; which was referred to the Committee on Ways and Means and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To further protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the Twenty-first Amendment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 *That (a) there shall be levied, assessed, collected, and paid*
4 *annual occupational taxes at the rates provided in subsec-*
5 *tion (b) by the following persons for the privilege of*
6 *carrying on any of the following businesses:*

7 (1) Importers importing into the United States
8 distilled spirits, wine, or malt beverages;

(3) Distillers of distilled spirits, producers of
wine, and producers of malt beverages;

12 (6) Any other person not included in the fore-
13 going, who is the holder of a basic permit issued under
14 this Act and is engaged in any business covered by
15 such permit.

16 (b) Such tax shall be at the rate of \$10 per annum
17 and shall be in addition to any other occupational tax im-
18 posed on such person. In the case of any person subject
19 to an occupational tax under any law of the United States,
20 the tax imposed by this section shall be levied, assessed,
21 collected, and paid in the same manner, at the same time,
22 and subject to the same provisions of law (including
23 penalties) as such other tax. In the case of a person who
24 is not subject to any occupational tax under any law of the
25 United States the tax imposed by this section shall be levied,

1 assessed, collected, and paid in the same manner, at the
2 same time, and subject to the same provisions of law (in-
3 cluding penalties) as the tax imposed by Paragraph "First"
4 of Section 3244 of the Revised Statutes, as amended (relat-
5 ing to the tax on brewers).

6 *FEDERAL ALCOHOL ADMINISTRATION*

7 SEC. 2. (a) There is hereby created the Federal
8 Alcohol Control Administration as a division in the Treas-
9 ury Department.

10 (b) The Administration shall be headed by an Admin-
11 istrator who shall be appointed by the President by and
12 with the advice and consent of the Senate. The Admin-
13 istrator shall for his services receive compensation at the
14 rate of \$10,000 per annum, payable monthly, together with
15 actual and necessary traveling and subsistence expenses
16 while engaged in the exercise of his powers and duties
17 outside the District of Columbia. No person shall be eligible
18 to appointment, or continue in office, as Administrator if
19 he is engaged or financially interested in, or is an officer
20 or director of or employed by a corporation engaged in,
21 the production or sale or other distribution of alcoholic
22 beverages, or the financing thereof.

23 (c) The Administrator shall, with the approval of the
24 Secretary of the Treasury, but without regard to the Civil
25 Service laws and the Classification Act of 1923, as amended,

1 appoint and fix the compensation and duties of such officers
2 and employees as he deems necessary to carry out his powers
3 and duties *but the compensation so fixed shall be subject to*
4 *the approval of the Secretary of the Treasury. The Ad-*
5 *ministrator is authorized to adopt an official seal, which*
6 *shall be judicially noticed.*

7 (d) The Administrator is authorized and directed to
8 prescribe such rules and regulations as may be necessary
9 to carry out his powers and duties. All rules and regula-
10 tions prescribed by the Administrator shall be subject to
11 the approval of the Secretary of the Treasury.

12 (e) Appropriations to carry out powers and duties of
13 the Administrator shall be available for expenditure, among
14 other purposes, for personal services and rent in the District
15 of Columbia and elsewhere, expenses for travel and sub-
16 sistence, for law books, books of reference, magazines,
17 periodicals, and newspapers, for contract stenographic re-
18 porting services, for subscriptions for library services, for
19 purchase of samples for analysis or use as evidence, and for
20 holding conferences of State and Federal liquor control
21 officials.

22 (f) The Administrator may, with the consent of the
23 department or agency affected, utilize the services of any
24 department or other agency of the Government to the
25 extent necessary to carry out his powers and ~~duties~~, *duties*

1 and he may authorize officers and employees thereof to act
2 as his agents.

3 (g) The provisions, including penalties, of sections 9
4 and 10 of the Federal Trade Commission Act, as now or
5 hereafter amended, shall be applicable to the jurisdiction,
6 powers, and duties of the Administrator, and to any person
7 (whether or not a corporation) subject to the provisions
8 of laws administered by the Administrator.

9 (h) The Administrator is authorized to require, in
10 such manner and form as he shall prescribe, such reports
11 as are necessary to carry out his powers and duties.

12 **UNLAWFUL BUSINESSES WITHOUT PERMIT**

13 SEC. 3. In order effectively to regulate interstate and
14 foreign commerce in distilled spirits, wine, and malt bev-
15 erages, to enforce the Twenty-first Amendment, and to
16 protect the revenue and enforce the postal laws with respect
17 to distilled spirits, wine, and malt beverages:

18 (a) It shall be unlawful, except pursuant to a basic
19 permit issued under this Act by the Administrator—

20 (1) to engage in the business of importing into
21 the United States distilled spirits, wine, or malt bev-
22 erages, or

23 (2) for any person so engaged to sell, offer or
24 deliver for sale, contract to sell, or ship, in interstate
25 or foreign commerce, directly or indirectly or through

1 an affiliate, distilled spirits, wine, or malt beverages
2 so imported.

3 This subsection shall take effect sixty days after the date of
4 the enactment of this Act.

5 (b) It shall be unlawful, except pursuant to a basic
6 permit issued under this Act by the Administrator—

7 (1) to engage in the business of distilling dis-
8 tilled spirits, producing wine, ~~producing malt beverages,~~
9 rectifying or blending distilled spirits or wine, or
10 bottling, or warehousing and bottling, distilled spirits,
11 or

12 (2) for any person so engaged to sell, offer or
13 deliver for sale, contract to sell, or ship, in interstate or
14 foreign commerce, directly or indirectly or through an
15 affiliate, distilled spirits, *spirits or* wine, ~~or malt bev-~~
16 ~~erages~~ so distilled, produced, rectified, blended, or
17 bottled, or warehoused and bottled.

18 This subsection shall take effect sixty days after the date of
19 the enactment of this Act.

20 (c) It shall be unlawful, except pursuant to a basic
21 permit issued under this Act by the Administrator—

22 (1) to engage in the business of purchasing for
23 resale at wholesale distilled spirits, wine, or malt
24 beverages, or

6 This subsection shall take effect January 1, 1936.

7 *This section shall not apply to any agency of a State*
8 *or political subdivision thereof or any officer or employee of*
9 *any such agency, and no such agency or officer or employee*
10 *shall be required to obtain a basic permit under this Act.*

PERMITS

12 SEC. 4. (a) The following persons shall, on appli-
13 cation therefor, be entitled to a basic permit:

14 (1) Any person who, on May 25, 1935, held a
15 basic permit as distiller, rectifier, wine producer,
16 brewer, or importer issued by an agency of the Federal
17 Government.

1 nections, not likely to commence operations within a
2 reasonable period or to maintain such operations in
3 conformity with Federal law; or (C) that the opera-
4 tions proposed to be conducted by such person are
5 in violation of the law of the State in which they
6 are to be conducted.

7 (b) If upon examination of any application for a
8 basic permit the Administrator has reason to believe that
9 the applicant is not entitled to such permit, he shall notify
10 the applicant thereof and, upon request by the applicant,
11 afford him due notice and opportunity for hearing on the
12 application. If the Administrator, after affording such
13 notice and opportunity for hearing, finds that the applicant
14 is not entitled to a basic permit hereunder, he shall by order
15 deny the application *stating the findings which are the basis*
16 *for his order.*

17 (c) The Administrator shall prescribe the manner and
18 form of all applications for basic permits (including the
19 facts to be set forth therein) and the form of all basic
20 permits, and shall specify in any basic permit the authority
21 conferred by the permit and the conditions thereof in
22 accordance with the provisions of this Act. To the extent
23 deemed necessary by the Administrator for the efficient
24 administration of this Act, separate applications and permits
25 shall be required by the Administrator with respect to

1 distilled spirits, wine, and malt beverages, and the various
2 classes thereof, and with respect to the various classes of
3 persons entitled to permits hereunder. The issuance of
4 a basic permit under this Act shall not operate to deprive
5 the United States of its remedy for any violation of law.

6 (d) A basic permit shall be conditioned upon com-
7 pliance with the requirements of section 5 (relating to
8 *unfair competition and unlawful practices*). with the
9 Twenty-first Amendment and laws relating to the enforce-
10 ment thereof, and with all other Federal laws relating to
11 distilled spirits, wine, and malt beverages, including taxes
12 with respect thereto.

13 (e) Each basic permit shall contain a condition that
14 no officer or director of the permittee shall at any time act
15 as an officer or director of any other corporation, joint
16 stock company, business trust, or association which is
17 engaged in the business of producing, importing, rectifying
18 or blending, bottling, warehousing, or selling at wholesale
19 or retail, distilled spirits, wine, or malt beverages. This
20 subsection shall not apply to permittees of the class described
21 in paragraph (1) of subsection (a) of this section until after
22 six months after the date of the enactment of this Act.

23 (f) (e) (1) No basic permit issued under this Act
24 shall contain any condition prohibiting, nor shall any rule,
25 regulation, or order, issued under this or any other Act of

1 Congress, prohibit, the use or sale of any barrel, cask, or
2 keg, if made of wood and if of one or more wine gallons
3 capacity, as a container in which to store, transport, or
4 sell, or from which to sell, any distilled spirits, wine, or
5 malt beverages. This subsection shall not apply to any
6 condition in any basic permit issued under this Act or any
7 rule, regulation, or order issued in connection therewith to
8 the extent that such condition applies in a State in which
9 the use or sale of any such barrel, cask, or keg is prohibited
10 by the law of such State.

11 (2) *It shall be unlawful for any person to package*
12 *or repackage distilled spirits for sale or resale in bottles*
13 *unless such person is a distiller, a rectifier of distilled*
14 *spirits, or a person operating a bonded warehouse qualified*
15 *under the internal revenue laws or a class 8 bonded ware-*
16 *house qualified under the customs laws, holding a basic per-*
17 *mit under this Act, or is a proprietor of an industrial alcohol*
18 *plant or is an agency of a State or political subdivision*
19 *thereof: Provided, That any other person may so package*
20 *distilled spirits in bottles if he qualifies under the internal rev-*
21 *enue laws as a rectifier and holds a basic permit issued under*
22 *this Act for the rectification of distilled spirits. Any person*
23 *who violates the requirements of this paragraph shall upon*
24 *conviction thereof be fined not more than , or*
25 *imprisoned for not more than , or both, and shall*

1 *forfeit to the United States all distilled spirits with respect*
2 *to which the violation occurs, and the bottles in which*
3 *packaged.*

4 (g) (f) A basic permit shall by order of the Adminis-
5 trator, after due notice and opportunity for hearing to the
6 permittee, (1) be revoked, or suspended for such period
7 as the Administrator deems appropriate, if the Adminis-
8 trator finds that the permittee has *willfully* violated any of
9 the conditions thereof, provided that for a first violation
10 of the conditions thereof the permit shall be subject to sus-
11 pension only; or (2) be revoked if the Administrator finds
12 that the permittee has not engaged in the operations author-
13 ized by the permit for a period of more than one year; or
14 (3) be annulled if the Administrator finds that the permit
15 was procured through fraud, or misrepresentation, or con-
16 cealment of material fact. *The order shall state the findings*
17 *which are the basis for the order.*

18 (h) (g) Orders of the Administrator with respect to
19 any denial of application, suspension, revocation, annulment,
20 or other proceedings, shall be served (1) in person by any
21 officer or employee of the Administration designated by
22 the Administrator or any internal revenue or customs officer
23 authorized by the Administrator for the purpose, or (2)
24 by mailing the order by registered mail, addressed to the

1 applicant or respondent at his last known address in the
2 records of the Administrator.

3 (i) (h) A basic permit shall continue in effect until sus-
4 pended, revoked, or annulled as provided herein, or volun-
5 tarily surrendered; except that (1) if leased, sold, or other-
6 wise voluntarily transferred, the permit shall be automati-
7 cally terminated thereupon, and (2) if transferred by oper-
8 ation of law or if actual or legal control of the permittee
9 is acquired, directly or indirectly, whether by stock-owner-
10 ship or in any other manner, by any person, then such
11 permit shall be automatically terminated at the expiration
12 of thirty days thereafter: *Provided*, That if within such
13 thirty-day period application for a new basic permit is made
14 by the transferee or permittee, respectively, then the out-
15 standing basic permit shall continue in effect until such
16 application is finally acted on by the Administrator.

17 (i) (i) An appeal may be taken by the permittee or
18 applicant for a permit from any order of the Administrator
19 denying an application for, or suspending, revoking, or
20 annulling, a basic permit. Such appeal shall be taken by
21 filing, in the circuit court of appeals of the United States
22 within any circuit wherein such person resides or has his
23 principal place of business, or in the United States Court of
24 Appeals for the District of Columbia, within sixty days after
25 the entry of such order, a written petition praying that the

1 order of the Administrator be modified or set aside in whole
2 or in part. A copy of such petition shall be forthwith
3 served upon the Administrator, or upon any officer des-
4 ignated by him for that purpose, and thereupon the Admin-
5 istrator shall certify and file in the court a transcript of
6 the record upon which the order complained of was entered.
7 Upon the filing of such transcript such court shall have
8 exclusive jurisdiction to affirm, modify, or set aside such
9 order, in whole or in part. No objection to the order of
10 the Administrator shall be considered by the court unless
11 such objection shall have been urged before the Admin-
12 istrator or unless there were reasonable grounds for failure
13 so to do. The finding of the Administrator as to the facts,
14 if supported by substantial evidence, shall be conclusive.
15 If any party shall apply to the court for leave to adduce
16 additional evidence, and shall show to the satisfaction of
17 the court that such additional evidence is material and
18 that there were reasonable grounds for failure to adduce
19 such evidence in the proceeding before the Administrator,
20 the court may order such additional evidence to be taken
21 before the Administrator and to be adduced upon the
22 hearing in such manner and upon such terms and con-
23 ditions as to the court may seem proper. The Adminis-
24 trator may modify his findings as to the facts by reason
25 of the additional evidence so taken, and he shall file with

1 the court such modified or new findings, which, if sup-
2 ported by substantial evidence, shall be conclusive, and
3 his recommendation, if any, for the modification or setting
4 aside of the original order. The judgment and decree of
5 the court affirming, modifying, or setting aside, in whole
6 or in part, any such order of the Administrator shall be
7 final, subject to review by the Supreme Court of the United
8 States upon certiorari or certification as provided in sec-
9 tions 239 and 240 of the Judicial Code, as amended
10 (U. S. C., title 28, secs. 346 and 347). The commence-
11 ment of proceedings under this subsection shall not, unless
12 specifically ordered by the court, operate as a stay of the
13 Administrator's order.

14 UNFAIR COMPETITION AND UNLAWFUL PRACTICES

15 SEC. 5. It shall be unlawful for any *person engaged in*
16 *business as a* distiller, brewer, rectifier, blender, or other
17 producer, or ~~any~~ *as an* importer or wholesaler, of distilled
18 spirits, wine, or malt beverages, or ~~any~~ *as a* bottler, or
19 warehouseman and bottler, of distilled spirits, directly or in-
20 directly or through an affiliate:

21 (a) Exclusive Outlet.—To require, by agreement or
22 otherwise, that any retailer engaged in the sale of distilled
23 spirits, wine, or malt beverages, purchase any such products
24 from such person to the exclusion in whole or in part of dis-
25 tilled spirits, wine, or malt beverages sold or offered for

1 sale by other persons in interstate or foreign commerce, if
2 such requirement is made in the course of interstate or for-
3 eign commerce, or if such person engages in such practice
4 to such an extent as substantially to restrain or prevent
5 transactions in interstate or foreign commerce in any such
6 products, or if the actual effect of such requirement is to
7 prevent, deter, hinder, or restrict other persons from selling
8 or offering for sale any such products to such retailer in
9 interstate or foreign commerce; or

10 (b) "Tied-House."—To induce through any of the
11 following means, any retailer engaged in the sale of distilled
12 spirits, wine, or malt beverages, to purchase any such prod-
13 ucts from such person to the exclusion in whole or in part
14 of distilled spirits, wine, or malt beverages sold or offered
15 for sale by other persons in interstate or foreign commerce,
16 if such inducement is made in the course of interstate or
17 foreign commerce, or if such person engages in the practice
18 of using such means, or any of them, to such an extent as
19 substantially to restrain or prevent transactions in inter-
20 state or foreign commerce in any such products, or if the
21 actual effect of such inducement is to prevent, deter, hinder,
22 or restrict other persons from selling or offering for sale any
23 such products to such retailer in interstate or foreign com-
24 mercial: (1) By acquiring or holding (after the expiration
25 of any existing license) any interest in any license with

1 respect to the premises of the retailer; or (2) by acquiring
2 any interest in any premises of the retailer; or (3) by fur-
3 nishing, giving, renting, lending, or selling to the retailer,
4 any equipment, fixtures, signs, supplies, money, or other
5 thing of value, except advertising specialties; or (4) by
6 paying or crediting the retailer for any advertising, display,
7 or distribution service; or (5) by guaranteeing any loan or
8 the repayment of any financial obligation of the retailer;
9 or (6) by extending to the retailer credit for a period in
10 excess of the credit period usual and customary to the in-
11 dustry for the particular class of transactions, as ascertained
12 by the Administrator and prescribed by regulations by
13 him. *Nothing in subsection (a) or (b) shall prevent a*
14 *wholesaler in any State, if permitted by the law thereof,*
15 *from operating not more than one retail establishment in*
16 *such State; or*

17 (c) Commercial Bribery.—To induce through any
18 of the following means, any trade buyer engaged in the
19 sale of distilled spirits, wine, or malt beverages, to purchase
20 any such products from such person to the exclusion in
21 whole or in part of distilled spirits, wine, or malt beverages
22 sold or offered for sale by other persons in interstate or
23 foreign commerce, if such inducement is made in the course
24 of interstate or foreign commerce, or if such person engages
25 in the practice of using such means, or any of them, to such

1 an extent as substantially to restrain or prevent transactions
2 in interstate or foreign commerce in any such products, or
3 if the actual effect of such inducement is to prevent, deter,
4 hinder, or restrict other persons from selling or offering for
5 sale any such products to such trade buyer in interstate or
6 foreign commerce: (1) By commercial bribery; or (2)
7 by offering or giving any bonus, premium, or compensation
8 to any officer, or employee, or representative of the trade
9 buyer; or

10 (d) Consignment Sales.—To sell, offer for sale,
11 or contract to sell to any trade buyer engaged in the sale of
12 distilled spirits, wine, or malt beverages, *or for any such*
13 *trade buyer to purchase, offer to purchase, or contract to*
14 *purchase*, any such products on consignment or ~~conditionally~~
15 *under conditional sale* or with the privilege of return or on
16 any basis otherwise than a bona fide sale, *or where any*
17 *part of such transaction involves, directly or indirectly, the*
18 *acquisition by such person from the trade buyer or his agree-*
19 *ment to acquire from the trade buyer other distilled spirits,*
20 *wines, or malt beverages, if such person makes such sale,*
21 *purchase, offer, or contract is made* in the course of interstate
22 or foreign commerce, or if such person *or trade buyer*
23 engages in such practice to such an extent as substantially
24 to restrain or prevent transactions in interstate or foreign
25 commerce in any such products, or if the actual effect of

1 such sale, *purchase*, offer, or contract is to prevent, deter,
2 hinder, or restrict other persons from selling or offering
3 for sale any such products to such trade buyer in interstate
4 or foreign commerce; or

5 (e) Labeling.—To sell or ship or deliver for sale or
6 shipment, or otherwise introduce in interstate or foreign
7 commerce, or to receive therein, or to remove from customs
8 custody for consumption, any distilled spirits, wine, or malt
9 beverages in bottles, unless such products are bottled, pack-
10 aged, and labeled in conformity with such regulations, to
11 be prescribed by the Administrator, with respect to pack-
12 aging, marking, branding, and labeling and size and fill of
13 container (1) as will prohibit deception of the consumer
14 with respect to such products or the quantity thereof and
15 as will prohibit, irrespective of falsity, such statements relat-
16 ing to age, manufacturing processes, analyses, guarantees,
17 and scientific or irrelevant matters as the Administrator
18 finds to be likely to mislead the consumer; (2) as will
19 provide the consumer with adequate information as to the
20 identity and quality of the products, the alcoholic content
21 thereof (except in case of wines, and except that statements
22 of, or statements likely to be considered as statements of,
23 alcoholic content of malt beverages are hereby prohibited
24 unless required by State law and except that, in case of
25 wines, statements of alcoholic content shall be required only

1 for wines containing more than 14 per centum of alcohol
2 by volume), the net contents of the package, and the manu-
3 facturer or bottler or importer of the product; (3) as will
4 require an accurate statement, in the case of distilled
5 spirits (*other than gin, cordials, liqueurs, and specialities*)
6 produced by blending or rectification if neutral spirits have
7 been used in the production thereof, informing the consumer
8 of the percentage of neutral spirits so used and of the name
9 of the commodity from which such neutral spirits have been
10 distilled; and (4) as will prohibit statements on the label
11 that are disparaging of a competitor's products or are false,
12 misleading, obscene, or indecent; and (5) as will prevent
13 *deception of the consumer by use of a trade or brand name*
14 *that is the name of any living individual of public promi-*
15 *nence, or existing private, public, or governmental organiza-*
16 *tion, or is a name that is in simulation or is an abbreviation*
17 *thereof, and as will prevent the use of a graphic, pictorial,*
18 *or emblematic representation of any such individual or*
19 *organization, if the use of such name or representation is*
20 *likely falsely to lead the consumer to believe that the prod-*
21 *uct has been indorsed, made, or used by, or produced for,*
22 *or under the supervision of, or in accordance with the speci-*
23 *fications of, such individual or organization: Provided,*
24 *That this clause shall not apply to the use of the name of*
25 *any person engaged in business as a distiller, brewer, recti-*

1 *fier, blender, or other producer, or as an importer, whole-*
2 *saler, retailer, bottler, or warehouseman, of distilled spirits,*
3 *wine, or malt beverages, nor to the use by any person of*
4 *a trade or brand name used by him or his predecessor in*
5 *interest prior to the date of the enactment of this Act; in-*
6 *cluding regulations requiring, at time of release from cus-*
7 *toms custody, certificates issued by foreign governments*
8 *covering origin, age, and identity of imported products.*
9 No person shall remove from Government custody after
10 purchase at any Government sale any distilled spirits,
11 wine, or malt beverages in bottles to be held for sale, until
12 such bottles are packaged, marked, branded, and labeled in
13 conformity with the requirements of this subsection. It
14 shall be unlawful for any person to alter, mutilate, destroy,
15 obliterate, or remove any mark, brand, or label upon distilled
16 spirits, wine, or malt beverages held for sale in interstate or
17 foreign commerce or after shipment therein, except as
18 authorized by Federal law or except pursuant to regulations
19 of the Administrator authorizing relabeling for purposes of
20 compliance with the requirements of this subsection *or*
21 *of State law.* In order to prevent the sale or shipment
22 or other introduction of distilled spirits, wine, or malt
23 beverages in interstate or foreign commerce, if bottled,
24 packaged, or labeled in violation of the requirements of
25 this ~~seetion~~ subsection, no bottler, or importer of distilled

1 spirits, wine, or malt beverages, shall, after such date as
2 the Administrator fixes as the earliest practicable date for
3 the application of the provisions of this subsection to any
4 class of such persons (but not later than January 1, 1936,
5 and only after 30 days' public notice), bottle or remove
6 from customs custody for consumption distilled spirits, wine,
7 or malt beverages, respectively, unless the bottler or im-
8 porter, upon application to the Administrator, has obtained
9 and has in his possession a certificate of label approval
10 covering the distilled spirits, wine, or malt beverages,
11 issued by the Administrator in such manner and form as
12 he shall by regulations prescribe: *Provided*, That any such
13 bottler shall be exempt from the requirements of this section
14 subsection if the bottler, upon application to the Admin-
15 istrator, shows to the satisfaction of the Administrator that
16 the distilled spirits, wine, or malt beverages to be bottled
17 by the applicant are not to be sold, or offered for sale, or
18 shipped or delivered for shipment, or otherwise introduced,
19 in interstate or foreign commerce. Officers of internal rev-
20 enue and customs are authorized and directed to withhold
21 the release of such products from the bottling plant or cus-
22 toms custody unless such certificates have been obtained, or
23 unless the application of the bottler for exemption has been
24 granted by the Administrator. *The provisions of law*
25 *relating to suits to restrain the enforcement of orders of the*

1 *Interstate Commerce Commission are made applicable to*
2 *the final action by the Administrator upon any application*
3 *under this subsection; or*

4 (f) **Unfair Name.**—To sell or ship or deliver for sale
5 or shipment, or otherwise introduce in interstate or foreign
6 commerce, or to receive therein, or to remove from customs
7 custody for consumption, any distilled spirits, wine, or malt
8 beverages, under a trade or brand name which the Admin-
9 istrator has found is the name of any individual or organiza-
10 tion, if the Administrator has also found that the use of such
11 name is unfair because it is intended or is likely falsely to
12 lead the consumer to believe that the product has the indorse-
13 ment of or is made or used by such individual or organ-
14 ization; or

15 (g) (f) **Advertising.**—To publish or disseminate or
16 cause to be published or disseminated by radio broadcast, or
17 in any newspaper, periodical or other publication or by any
18 sign or outdoor advertisement or any other printed or graphic
19 matter, any advertisement of distilled spirits, wine, or malt
20 beverages, if such advertisement is in, or is calculated to
21 induce sales in, interstate or foreign commerce, or is dis-
22 seminated by mail, unless such advertisement is in con-
23 formity with such regulations, to be prescribed by the Ad-
24 ministrator, (1) as will prevent deception of the consumer
25 with respect to the products advertised and as will prohibit,

1 irrespective of falsity, such statements relating to age, manu-
2 facturing processes, analyses, guarantees, and scientific or
3 irrelevant matters as the Administrator finds to be likely to
4 mislead the consumer; (2) as will provide the consumer
5 with adequate information as to the identity and quality of
6 the products advertised, the alcoholic content thereof (except
7 in case of wines and except that statements of, or statements
8 likely to be considered as statements of, alcoholic content
9 of malt beverages are prohibited and except that, in case
10 of wines, statements of alcoholic content shall be required
11 only for wines containing more than 14 per centum of
12 alcohol by volume), net contents of the package, and the
13 person responsible for the advertisement; (3) as will
14 require an accurate statement, in the case of distilled spirits
15 (other than gin, cordials, liqueurs, and specialties) pro-
16 duced by blending or rectification if neutral spirits have
17 been used in the production thereof, informing the con-
18 sumer of the percentage of neutral spirits so used and
19 of the name of the commodity from which such neutral
20 spirits have been distilled; (4) as will prohibit state-
21 ments that are disparaging of a competitor's products or
22 are false, misleading, obscene, or indecent; (5) as will
23 prevent the use of any trade or brand name with respect to
24 which a finding has been made by the Administrator under
25 subsection (f) that the use of such name is unfair; and (6)

1 (5) as will prevent statements inconsistent with any state-
2 ment on the labeling of the products advertised. This sub-
3 section shall not apply to outdoor advertising in place on
4 the date of the enactment of this Act.

5 *The provisions of subsections (a), (b), and (c) shall*
6 *not apply to any act done by an agency of a State or*
7 *political subdivision thereof, or by any officer or employee*
8 *of such agency.*

9 *The Administrator shall give reasonable public notice,*
10 *and afford to interested parties opportunity for hearing,*
11 *prior to prescribing regulations to carry out the provisions*
12 *of this section.*

13 **PENALTIES**

14 SEC. 6. The District Courts of the United States, the
15 Supreme Court of the District of Columbia, and the United
16 States Court for any Territory, of the District where the
17 offense is committed or threatened or of which the offender
18 is an inhabitant or has his principal place of business, are
19 hereby vested with jurisdiction of any suit brought by
20 the Attorney General in the name of the United States,
21 to prevent and restrain violations of any of the provisions
22 of this Act. Any person violating any of the provisions
23 of sections 3 or 5 shall be guilty of a misdemeanor and
24 upon conviction thereof be fined not more than \$1,000 for
25 each offense. Subject to the approval of the Attorney

1 General, the Administrator is authorized, prior to com-
2 mencement of court proceedings with respect to any vio-
3 lation of this Act, to compromise the liability arising with
4 respect to such violation (1) upon payment of a sum not
5 in excess of \$500 for each offense, to be collected by the
6 Administrator and to be paid into the Treasury as miscel-
7 laneous receipts, and (2) in case of repetitious violations
8 and in order to avoid mutiplicity of criminal proceedings,
9 upon agreement to a stipulation that the United States
10 may, on its own motion upon five days' notice to the viola-
11 tor, cause a consent decree to be entered by any court of
12 competent jurisdiction enjoining the repetition of such
13 violation.

14 *INTERLOCKING DIRECTORATES*

15 *SEC. 7. It shall be unlawful for any officer or director*
16 *of a corporation, joint stock company, business trust, or*
17 *association engaged in business as a distiller, rectifier, or*
18 *blender of distilled spirits to take office, after the date of the*
19 *enactment of this Act, as an officer or director of any other*
20 *corporation, joint stock company, business trust, or associa-*
21 *tion engaged in business as a distiller, rectifier, or blender*
22 *of distilled spirits, unless application therefor has been made*
23 *to the Administrator and unless due showing has been made*
24 *to him that service in both positions will not substantially*
25 *restrain or prevent competition in interstate or foreign com-*

1 *merce in distilled spirits. The Administrator shall, by order,*
2 *grant or deny such application on the basis of the proof*
3 *submitted to him and his finding thereon, and the provisions*
4 *of law relating to suits to restrain enforcement of orders of*
5 *the Interstate Commerce Commission are made applicable to*
6 *the final action by the Administrator upon any application*
7 *under this section. This section shall not apply to taking*
8 *office as, or service as, an officer or director of more than*
9 *one such distiller, rectifier, or blender of distilled spirits if*
10 *they are affiliates. Violations of this section shall be punished*
11 *by a fine not exceeding \$1,000.*

12 **FEDERAL ALCOHOL CONTROL ADMINISTRATION**

13 SEC. 7 8. The Federal Alcohol Control Administration
14 established by Executive order under the provisions of
15 Title I of the National Industrial Recovery Act is hereby
16 abolished. All papers, records, and property of such Fed-
17 eral Alcohol Control Administration are hereby transferred
18 to the Administrator. *This section shall take effect on the*
19 *date that the Administrator first appointed under this Act*
20 *takes office.*

21 **MISCELLANEOUS**

22 SEC. 8 9. (a) As used in this Act—

23 (1) The term “Administrator” means the head
24 of the Federal Alcohol Control Administration.

(2) The term "United States" means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means Alaska, Hawaii, and Puerto Rico.

(3) The term "interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(4) The term "person" means individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof; and the term "trade buyer" means any person who is a wholesaler or retailer.

(5) The term "affiliate" means any one of two or more persons if one of such persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of the other or others of such persons; and any one of two or more persons subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

(7) The term "wine" means (1) wine as defined in section 610 and section 617 of the Revenue Act of 1918, (U. S. C., title 26, secs. 441 and 444) as now in force or hereafter amended, and (2) other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake; in each instance only if containing not less than 7 per centum and not more than 24 per centum of alcohol by volume, and if for non-industrial use.

1 prepared therefrom, and with or without the addition
2 of carbon dioxide, and with or without other whole-
3 some products suitable for human food consumption.

4 (9) The term "bottle" means any container,
5 irrespective of the material from which made, for use
6 for the sale of distilled spirits, wine, or malt beverages
7 at retail.

8 (b) The right to amend or repeal the provisions of
9 this Act is expressly reserved.

10 (c) If any provision of this Act, or the application
11 of such provision to any person or circumstance, is held
12 invalid, the remainder of the Act and the application of such
13 provision to persons or circumstances other than those as
14 to which it is held invalid, shall not be affected thereby.

15 (d) This Act may be cited as the "Federal Alcohol
16 *Control Administration Act*".

JUNE 24, 1935

**74TH CONGRESS }
1ST SESSION } **H. R. 8539****

A BILL

To further protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the Twenty-first Amendment, and for other purposes.

By Mr. DOUGHTON

JUNE 18, 1935

Referred to the Committee on Ways and Means and ordered to be printed

74TH CONGRESS
1ST SESSION

H. R. 8539

IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 1935

Mr. DOUGHTON introduced the following bill; which was referred to the Committee on Ways and Means and ordered to be printed

A BILL

To further protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the Twenty-first Amendment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 *That (a) there shall be levied, assessed, collected, and paid*
4 *annual occupational taxes at the rates provided in subsec-*
5 *tion (b) by the following persons for the privilege of*
6 *carrying on any of the following businesses:*

7 (1) Importers importing into the United States
8 distilled spirits, wine, or malt beverages;

(3) Distillers of distilled spirits, producers of
wine, and producers of malt beverages;

12 (6) Any other person not included in the fore-
13 going, who is the holder of a basic permit issued under
14 this Act and is engaged in any business covered by
15 such permit.

16 (b) Such tax shall be at the rate of \$10 per annum
17 and shall be in addition to any other occupational tax im-
18 posed on such person. In the case of any person subject
19 to an occupational tax under any law of the United States,
20 the tax imposed by this section shall be levied, assessed,
21 collected, and paid in the same manner, at the same time,
22 and subject to the same provisions of law (including
23 penalties) as such other tax. In the case of a person who
24 is not subject to any occupational tax under any law of the
25 United States the tax imposed by this section shall be levied,

1 assessed, collected, and paid in the same manner, at the
2 same time, and subject to the same provisions of law (in-
3 cluding penalties) as the tax imposed by Paragraph "First"
4 of Section 3244 of the Revised Statutes, as amended (relat-
5 ing to the tax on brewers).

6 SEC. 2. (a) There is hereby created the Federal
7 Alcohol Control Administration as a division in the Treas-
8 ury Department.

9 (b) The Administration shall be headed by an Admin-
10 istrator who shall be appointed by the President by and
11 with the advice and consent of the Senate. The Admin-
12 istrator shall for his services receive compensation at the
13 rate of \$10,000 per annum, payable monthly, together with
14 actual and necessary traveling and subsistence expenses
15 while engaged in the exercise of his powers and duties
16 outside the District of Columbia. No person shall be eligible
17 to appointment, or continue in office, as Administrator if
18 he is engaged or financially interested in, or is an officer
19 or director of or employed by a corporation engaged in,
20 the production or sale or other distribution of alcoholic
21 beverages, or the financing thereof.

22 (c) The Administrator shall, with the approval of the
23 Secretary of the Treasury, but without regard to the Civil
24 Service laws and the Classification Act of 1923, as amended,
25 appoint and fix the compensation and duties of such officers

1 and employees as he deems necessary to carry out his powers
2 and duties.

3 (d) The Administrator is authorized and directed to
4 prescribe such rules and regulations as may be necessary
5 to carry out his powers and duties. All rules and regula-
6 tions prescribed by the Administrator shall be subject to
7 the approval of the Secretary of the Treasury.

8 (e) Appropriations to carry out powers and duties of
9 the Administrator shall be available for expenditure, among
10 other purposes, for personal services and rent in the District
11 of Columbia and elsewhere, expenses for travel and sub-
12 sistence, for law books, books of reference, magazines,
13 periodicals, and newspapers, for contract stenographic re-
14 porting services, for subscriptions for library services, for
15 purchase of samples for analysis or use as evidence, and for
16 holding conferences of State and Federal liquor control
17 officials.

18 (f) The Administrator may, with the consent of the
19 department or agency affected, utilize the services of any
20 department or other agency of the Government to the
21 extent necessary to carry out his powers and duties, and he
22 may authorize officers and employees thereof to act as his
23 agents.

24 (g) The provisions, including penalties, of sections 9
25 and 10 of the Federal Trade Commission Act, as now or

1 hereafter amended, shall be applicable to the jurisdiction,
2 powers, and duties of the administrator, and to any person
3 (whether or not a corporation) subject to the provisions
4 of laws administered by the Administrator.

5 (h) The Administrator is authorized to require, in
6 such manner and form as he shall prescribe, such reports
7 as are necessary to carry out his powers and duties.

8 UNLAWFUL BUSINESSES WITHOUT PERMIT

9 SEC. 3. In order effectively to regulate interstate and
10 foreign commerce in distilled spirits, wine, and malt bev-
11 erages, to enforce the Twenty-first Amendment, and to
12 protect the revenue and enforce the postal laws with respect
13 to distilled spirits, wine, and malt beverages:

14 (a) It shall be unlawful, except pursuant to a basic
15 permit issued under this Act by the Administrator—

16 (1) to engage in the business of importing into
17 the United States distilled spirits, wine, or malt bev-
18 erages, or

19 (2) for any person so engaged to sell, offer or
20 deliver for sale, contract to sell, or ship, in interstate
21 or foreign commerce, directly or indirectly or through
22 an affiliate, distilled spirits, wine, or malt beverages
23 so imported.

24 This subsection shall take effect sixty days after the date of
25 the enactment of this Act.

(b) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

14 This subsection shall take effect sixty days after the date of
15 the enactment of this Act.

16 (c) It shall be unlawful, except pursuant to a basic
17 permit issued under this Act by the Administrator—

18 (1) to engage in the business of purchasing for
19 resale at wholesale distilled spirits, wine, or malt
20 beverages, or

(2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

26 This subsection shall take effect January 1, 1936.

1 PERMITS

2 SEC. 4. (a) The following persons shall, on application therefor, be entitled to a basic permit:

4 (1) Any person who, on May 25, 1935, held a
5 basic permit as distiller, rectifier, wine producer,
6 brewer, or importer issued by an agency of the Federal
7 Government.

8 (2) Any other person unless the Administrator
9 finds (A) that such person (or in case of a corporation,
10 any of its officers, directors, or principal stock-
11 holders) has, within five years prior to date of applica-
12 tion, been convicted of a felony under Federal or State
13 law; or (B) that such person is, by reason of his
14 business experience, financial standing, or trade con-
15 nections, not likely to commence operations within a
16 reasonable period or to maintain such operations in
17 conformity with Federal law; or (C) that the opera-
18 tions proposed to be conducted by such person are
19 in violation of the law of the State in which they
20 are to be conducted.

21 (b) If upon examination of any application for a
22 basic permit the Administrator has reason to believe that
23 the applicant is not entitled to such permit, he shall notify
24 the applicant thereof and, upon request by the applicant,
25 afford him due notice and opportunity for hearing on the

1 application. If the Administrator, after affording such
2 notice and opportunity for hearing, finds that the applicant
3 is not entitled to a basic permit hereunder, he shall by order
4 deny the application.

5 (c) The Administrator shall prescribe the manner and
6 form of all applications for basic permits (including the
7 facts to be set forth therein) and the form of all basic
8 permits, and shall specify in any basic permit the authority
9 conferred by the permit and the conditions thereof in
10 accordance with the provisions of this Act. To the extent
11 deemed necessary by the Administrator for the efficient
12 administration of this Act, separate applications and permits
13 shall be required by the Administrator with respect to
14 distilled spirits, wine, and malt beverages, and the various
15 classes thereof, and with respect to the various classes of
16 persons entitled to permits hereunder. The issuance of
17 a basic permit under this Act shall not operate to deprive
18 the United States of its remedy for any violation of law.

19 (d) A basic permit shall be conditioned upon com-
20 pliance with the requirements of section 5 (relating to
21 unlawful practices), with the Twenty-first Amendment and
22 laws relating to the enforcement thereof, and with all other
23 Federal laws relating to distilled spirits, wine, and malt
24 beverages, including taxes with respect thereto.

11 (f) No basic permit issued under this Act shall con-
12 tain any condition prohibiting, nor shall any rule, regulation,
13 or order, issued under this or any other Act of Congress,
14 prohibit, the use or sale of any barrel, cask, or keg, if made
15 of wood and if of one or more wine gallons capacity, as a
16 container in which to store, transport, or sell, or from which
17 to sell, any distilled spirits, wine, or malt beverages. This
18 subsection shall not apply to any condition in any basic
19 permit issued under this Act or any rule, regulation, or
20 order issued in connection therewith to the extent that such
21 condition applies in a State in which the use or sale of any
22 such barrel, cask, or keg is prohibited by the law of such
23 State.

24 (g) A basic permit shall by order of the Administrator,
25 after due notice and opportunity for hearing to the permittee,

1 (1) be revoked, or suspended for such period as the Admin-
2 istrator deems appropriate, if the Administrator finds that
3 the permittee has violated any of the conditions thereof,
4 provided that for a first violation of the conditions thereof
5 the permit shall be subject to suspension only; or (2) be
6 revoked if the Administrator finds that the permittee has
7 not engaged in the operations authorized by the permit for
8 a period of more than one year; or (3) be annulled if the
9 Administrator finds that the permit was procured through
10 fraud, or misrepresentation, or concealment of material fact.

11 (h) Orders of the Administrator with respect to any
12 denial of application, suspension, revocation, annulment, or
13 other proceedings, shall be served (1) in person by any
14 officer or employee of the Administration designated by
15 the Administrator or any internal revenue or customs officer
16 authorized by the Administrator for the purpose, or (2)
17 by mailing the order by registered mail, addressed to the
18 applicant or respondent at his last known address in the
19 records of the Administrator.

20 (i) A basic permit shall continue in effect until sus-
21 pended, revoked, or annulled as provided herein, or volun-
22 tarily surrendered; except that (1) if leased, sold, or other-
23 wise voluntarily transferred, the permit shall be automati-
24 cally terminated thereupon, and (2) if transferred by oper-
25 ation of law or if actual or legal control of the permittee

1 is acquired, directly or indirectly, whether by stock-owner-
2 ship or in any other manner, by any person, then such
3 permit shall be automatically terminated at the expiration
4 of thirty days thereafter: *Provided*, That if within such
5 thirty-day period application for a new basic permit is made
6 by the transferee or permittee, respectively, then the out-
7 standing basic permit shall continue in effect until such
8 application is finally acted on by the Administrator.

9 (j) An appeal may be taken by the permittee or
10 applicant for a permit from any order of the Administrator
11 denying an application for, or suspending, revoking, or
12 annulling, a basic permit. Such appeal shall be taken by
13 filing, in the circuit court of appeals of the United States
14 within any circuit wherein such person resides or has his
15 principal place of business, or in the United States Court of
16 Appeals for the District of Columbia, within sixty days after
17 the entry of such order, a written petition praying that the
18 order of the Administrator be modified or set aside in whole
19 or in part. A copy of such petition shall be forthwith
20 served upon the Administrator, or upon any officer des-
21 ignated by him for that purpose, and thereupon the Admin-
22 istrator shall certify and file in the court a transcript of
23 the record upon which the order complained of was entered.
24 Upon the filing of such transcript such court shall have
25 exclusive jurisdiction to affirm, modify, or set aside such

1 order, in whole or in part. No objection to the order of
2 the Administrator shall be considered by the court unless
3 such objection shall have been urged before the Admin-
4 istrator or unless there were reasonable grounds for failure
5 so to do. The finding of the Administrator as to the facts,
6 if supported by substantial evidence, shall be conclusive.
7 If any party shall apply to the court for leave to adduce
8 additional evidence, and shall show to the satisfaction of
9 the court that such additional evidence is material and
10 that there were reasonable grounds for failure to adduce
11 such evidence in the proceeding before the Administrator,
12 the court may order such additional evidence to be taken
13 before the Administrator and to be adduced upon the
14 hearing in such manner and upon such terms and con-
15 ditions as to the court may seem proper. The Adminis-
16 trator may modify his findings as to the facts by reason
17 of the additional evidence so taken, and he shall file with
18 the court such modified or new findings, which, if sup-
19 ported by substantial evidence, shall be conclusive, and
20 his recommendation, if any, for the modification or setting
21 aside of the original order. The judgment and decree of
22 the court affirming, modifying, or setting aside, in whole
23 or in part, any such order of the Administrator shall be
24 final, subject to review by the Supreme Court of the United
25 States upon certiorari or certification as provided in sec-

1 tions 239 and 240 of the Judicial Code, as amended
2 (U. S. C., title 28, secs. 346 and 347). The commence-
3 ment of proceedings under this subsection shall not, unless
4 specifically ordered by the court, operate as a stay of the
5 Administrator's order.

6 UNFAIR COMPETITION AND UNLAWFUL PRACTICES

7 SEC. 5. It shall be unlawful for any distiller, brewer,
8 rectifier, blender, or other producer, or any importer or
9 wholesaler, of distilled spirits, wine, or malt beverages, or
10 any bottler, or warehouseman and bottler, of distilled spirits,
11 directly or indirectly or through an affiliate:

12 (a) Exclusive Outlet.—To require, by agreement or
13 otherwise, that any retailer engaged in the sale of distilled
14 spirits, wine, or malt beverages, purchase any such products
15 from such person to the exclusion in whole or in part of dis-
16 tilled spirits, wine, or malt beverages sold or offered for
17 sale by other persons in interstate or foreign commerce, if
18 such requirement is made in the course of interstate or for-
19 eign commerce, or if such person engages in such practice
20 to such an extent as substantially to restrain or prevent
21 transactions in interstate or foreign commerce in any such
22 products, or if the actual effect of such requirement is to
23 prevent, deter, hinder, or restrict other persons from selling
24 or offering for sale any such products to such retailer in
25 interstate or foreign commerce; or

1 excess of the credit period usual and customary to the in-
2 dustry for the particular class of transactions, as ascertained
3 by the Administrator and prescribed by regulations by
4 him; or

5 (c) Commercial Bribery.—To induce through any
6 of the following means, any trade buyer engaged in the
7 sale of distilled spirits, wine, or malt beverages, to purchase
8 any such products from such person to the exclusion in
9 whole or in part of distilled spirits, wine, or malt beverages
10 sold or offered for sale by other persons in interstate or
11 foreign commerce, if such inducement is made in the course
12 of interstate or foreign commerce, or if such person engages
13 in the practice of using such means, or any of them, to such
14 an extent as substantially to restrain or prevent transactions
15 in interstate or foreign commerce in any such products, or
16 if the actual effect of such inducement is to prevent, deter,
17 hinder, or restrict other persons from selling or offering for
18 sale any such products to such trade buyer in interstate or
19 foreign commerce: (1) By commercial bribery; or (2)
20 by offering or giving any bonus, premium, or compensation
21 to any officer, or employee, or representative of the trade
22 buyer; or

23 (d) Consignment Sales.—To sell, offer for sale,
24 or contract to sell to any trade buyer engaged in the sale of
25 distilled spirits, wine, or malt beverages, any such products

1 on consignment or conditionally or with the privilege of
2 return or on any basis otherwise than a bona fide sale, if
3 such person makes such sale, offer, or contract in the course
4 of interstate or foreign commerce, or if such person engages
5 in such practice to such an extent as substantially to restrain
6 or prevent transactions in interstate or foreign commerce
7 in any such products, or if the actual effect of such sale,
8 offer, or contract is to prevent, deter, hinder, or restrict
9 other persons from selling or offering for sale any such
10 products to such trade buyer in interstate or foreign com-
11 merce; or

12 (e) Labeling.—To sell or ship or deliver for sale or
13 shipment, or otherwise introduce in interstate or foreign
14 commerce, or to receive therein, or to remove from customs
15 custody for consumption, any distilled spirits, wine, or malt
16 beverages in bottles, unless such products are bottled, pack-
17 aged, and labeled in conformity with such regulations, to
18 be prescribed by the Administrator, with respect to pack-
19 aging, marking, branding, and labeling and size and fill of
20 container (1) as will prohibit deception of the consumer
21 with respect to such products or the quantity thereof and
22 as will prohibit, irrespective of falsity, such statements relat-
23 ing to age, manufacturing processes, analyses, guarantees,
24 and scientific or irrelevant matters as the Administrator
25 finds to be likely to mislead the consumer; (2) as will

1 provide the consumer with adequate information as to the
2 identity and quality of the products, the alcoholic content
3 thereof (except in case of wines, and except that statements
4 of, or statements likely to be considered as statements of,
5 alcoholic content of malt beverages are hereby prohibited
6 unless required by State law), the net contents of the pack-
7 age, and the manufacturer or bottler or importer of the
8 product; (3) as will require an accurate statement, in the
9 case of distilled spirits produced by blending or rectifica-
10 tion if neutral spirits have been used in the production
11 thereof, informing the consumer of the percentage of neu-
12 tral spirits so used and of the name of the commodity from
13 which such neutral spirits have been distilled; and (4) as
14 will prohibit statements on the label that are disparaging of
15 a competitor's products or are false, misleading, obscene, or
16 indecent; including regulations requiring, at time of release
17 from customs custody, certificates issued by foreign gov-
18 ernments covering origin, age, and identity of imported
19 products. No person shall remove from Government custody
20 after purchase at any Government sale any distilled spirits,
21 wine, or malt beverages in bottles to be held for sale, until
22 such bottles are packaged, marked, branded, and labeled in
23 conformity with the requirements of this subsection. It
24 shall be unlawful for any person to alter, mutilate, destroy,
25 obliterate, or remove any mark, brand, or label upon distilled

1 spirits, wine, or malt beverages held for sale in interstate or
2 foreign commerce or after shipment therein, except as
3 authorized by Federal law or except pursuant to regulations
4 of the Administrator authorizing relabeling for purposes of
5 compliance with the requirements of this subsection. In
6 order to prevent the sale or shipment or other introduction
7 of distilled spirits, wine, or malt beverages in interstate or
8 foreign commerce, if bottled, packaged, or labeled in viola-
9 tion of the requirements of this section, no bottler, or im-
10 porter of distilled spirits, wine, or malt beverages, shall,
11 after such date as the Administrator fixes as the earliest
12 practicable date for the application of the provisions of this
13 subsection to any class of such persons (but not later than
14 January 1, 1936, and only after 30 days' public notice),
15 bottle or remove from customs custody for consumption dis-
16 tilled spirits, wine, or malt beverages, respectively, unless
17 the bottler or importer, upon application to the Adminis-
18 trator, has obtained and has in his possession a certificate
19 of label approval covering the distilled spirits, wine, or
20 malt beverages, issued by the Administrator in such manner
21 and form as he shall by regulations prescribe: *Provided,*
22 That any such bottler shall be exempt from the requirement
23 of this section if the bottler, upon application to the Admin-
24 istrator, shows to the satisfaction of the Administrator that
25 the distilled spirits, wine, or malt beverages to be bottled

1 by the applicant are not to be sold, or offered for sale, or
2 shipped or delivered for shipment, or otherwise introduced,
3 in interstate or foreign commerce. Officers of internal rev-
4 enue and customs are authorized and directed to withhold
5 the release of such products from the bottling plant or cus-
6 toms custody unless such certificates have been obtained, or
7 unless the application of the bottler for exemption has been
8 granted by the Administrator; or

9 (f) Unfair Name.—To sell or ship or deliver for sale
10 or shipment, or otherwise introduce in interstate or foreign
11 commerce, or to receive therein, or to remove from customs
12 custody for consumption, any distilled spirits, wine, or malt
13 beverages, under a trade or brand name which the Admin-
14 istrator has found is the name of any individual or organiza-
15 tion, if the Administrator has also found that the use of such
16 name is unfair because it is intended or is likely falsely to
17 lead the consumer to believe that the product has the indorse-
18 ment of or is made or used by such individual or organ-
19 ization; or

20 (g) Advertising.—To publish or disseminate or cause
21 to be published or disseminated by radio broadcast, or in
22 any newspaper, periodical or other publication or by any
23 sign or outdoor advertisement or any other printed or graphic
24 matter, any advertisement of distilled spirits, wine, or malt
25 beverages, if such advertisement is in, or is calculated to

1 induce sales in, interstate or foreign commerce, or is dis-
2 seminated by mail, unless such advertisement is in con-
3 formity with such regulations, to be prescribed by the Ad-
4 ministrator, (1) as will prevent deception of the consumer
5 with respect to the products advertised and as will prohibit,
6 irrespective of falsity, such statements relating to age, manu-
7 facturing processes, analyses, guarantees, and scientific or
8 irrelevant matters as the Administrator finds to be likely to
9 mislead the consumer; (2) as will provide the consumer
10 with adequate information as to the identity and quality of
11 the products advertised, the alcoholic content thereof (except
12 in case of wines and except that statements of, or statements
13 likely to be considered as statements of, alcoholic content
14 of malt beverages are prohibited), net contents of the pack-
15 age, and the person responsible for the advertisement;
16 (3) as will require an accurate statement, in the case of
17 distilled spirits produced by blending or rectification if
18 neutral spirits have been used in the production thereof,
19 informing the consumer of the percentage of neutral spirits
20 so used and of the name of the commodity from which such
21 neutral spirits have been distilled; (4) as will prohibit
22 statements that are disparaging of a competitor's products
23 or are false, misleading, obscene, or indecent; (5) as will
24 prevent the use of any trade or brand name with respect to
25 which a finding has been made by the Administrator under

1 subsection (f) that the use of such name is unfair; and (6)
2 as will prevent statements inconsistent with any statement
3 on the labeling of the products advertised. This sub-
4 section shall not apply to outdoor advertising in place on
5 the date of the enactment of this Act.

6 PENALTIES

7 SEC. 6. The District Courts of the United States, the
8 Supreme Court of the District of Columbia, and the United
9 States Court for any Territory, of the District where the
10 offense is committed or threatened or of which the offender
11 is an inhabitant or has his principal place of business, are
12 hereby vested with jurisdiction of any suit brought by
13 the Attorney General in the name of the United States,
14 to prevent and restrain violations of any of the provisions
15 of this Act. Any person violating any of the provisions
16 of sections 3 or 5 shall be guilty of a misdemeanor and
17 upon conviction thereof be fined not more than \$1,000 for
18 each offense. Subject to the approval of the Attorney
19 General, the Administrator is authorized, prior to com-
20 mencement of court proceedings with respect to any vi-
21 lation of this Act, to compromise the liability arising with
22 respect to such violation (1) upon payment of a sum not
23 in excess of \$500 for each offense, to be collected by the
24 Administrator and to be paid into the Treasury as miscel-
25 laneous receipts, and (2) in case of repetitious violations

1 and in order to avoid mutiplicity of criminal proceedings,
2 upon agreement to a stipulation that the United States
3 may, on its own motion upon five days' notice to the viola-
4 tor, cause a consent decree to be entered by any court of
5 competent jurisdiction enjoining the repetition of such
6 violation.

7 SEC. 7. The Federal Alcohol Control Administration
8 established by Executive order under the provisions of
9 Title I of the National Industrial Recovery Act is hereby
10 abolished. All papers, records, and property of such Fed-
11 eral Alcohol Control Administration are hereby transferred
12 to the Administrator.

13 MISCELLANEOUS

14 SEC. 8. (a) As used in this Act—

15 (1) The term "Administrator" means the head
16 of the Federal Alcohol Control Administration.

17 (2) The term "United States" means the sev-
18 eral States and Territories and the District of Colum-
19 bia; the term "State" includes a Territory and the
20 District of Columbia; and the term "Territory" means
21 Alaska, Hawaii, and Puerto Rico.

22 (3) The term "interstate or foreign commerce"
23 means commerce between any State and any place
24 outside thereof, or commerce within any Territory or

1 the District of Columbia, or between points within
2 the same State but through any place outside thereof.

3 (4) The term "person" means individual, partners-
4 ship, joint stock company, business trust, associa-
5 tion, corporation, or other form of business enterprise,
6 including a receiver, trustee, or liquidating agent.

7 (5) The term "affiliate" means any one of two or
8 more persons if one of such persons has actual or legal
9 control, directly or indirectly, whether by stock owner-
10 ship or otherwise, of the other or others of such per-
11 sons; and any one of two or more persons subject to
12 common control, actual or legal, directly or indirectly,
13 whether by stock ownership or otherwise.

14 (6) The term "distilled spirits" means ethyl
15 alcohol, hydrated oxide of ethyl, spirits of wine,
16 whiskey, rum, brandy, gin, and other distilled spirits,
17 including all dilutions and mixtures thereof, for non-
18 industrial use.

19 (7) The term "wine" means (1) wine as de-
20 fined in section 610 and section 617 of the Revenue
21 Act of 1918, (U. S. C., title 26, secs. 441 and 444)
22 as now in force or hereafter amended, and (2) other
23 alcoholic beverages not so defined, but made in the
24 manner of wine, including sparkling and carbonated

1 wine, wine made from condensed grape must, wine
2 made from other agricultural products than the juice
3 of sound, ripe grapes, imitation wine, compounds sold
4 as wine, vermouth, cider, perry and sake; in each
5 instance only if containing not less than 7 per centum
6 and not more than 24 per centum of alcohol by volume,
7 and if for non-industrial use.

8 (8) The term "malt beverage" means a bev-
9 erage made by the alcoholic fermentation of an infusion
10 or decoction, or combination of both, in potable brew-
11 ing water, of malted barley with hops, or their parts,
12 or their products, and with or without other malted
13 cereals, and with or without the addition of unmalted
14 or prepared cereals, other carbohydrates or products
15 prepared therefrom, and with or without the addition
16 of carbon dioxide; and with or without other whole-
17 some products suitable for human food consumption.

18 (9) The term "bottle" means any container,
19 irrespective of the material from which made, for use
20 for the sale of distilled spirits, wine, or malt beverages
21 at retail.

22 (b) The right to amend or repeal the provisions of
23 this Act is expressly reserved.

24 (c) If any provision of this Act, or the application
25 of such provision to any person or circumstance, is held

1 invalid, the remainder of the Act and the application of such
2 provision to persons or circumstances other than those as
3 to which it is held invalid, shall not be affected thereby.

4 (d) This Act may be cited as the "Federal Alcohol
5 Control Act".

A BILL

To further protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the Twenty-first Amendment, and for other purposes.

By Mr. Doughton

JUNE 18, 1935

Referred to the Committee on Ways and Means and ordered to be printed

74TH CONGRESS
1ST SESSION

H. R. 8870

IN THE HOUSE OF REPRESENTATIVES

JULY 16, 1935

Mr. CULLEN introduced the following bill; which was referred to the Committee on Ways and Means and ordered to be printed

A BILL

To further protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 *That (a) there shall be levied, assessed, collected, and paid*
4 *annual occupational taxes at the rates provided in subsection*
5 *(b) by the following persons for the privilege of carrying*
6 *on any of the following businesses:*

7 *(1) Importers importing into the United States*
8 *distilled spirits, wine, or malt beverages;*

(3) Distillers of distilled spirits, producers of
wine, and producers of malt beverages;

12 (6) Any other person not included in the fore-
13 going, who is the holder of a basic permit issued under
14 this Act and is engaged in any business covered by
15 such permit.

16 (b) Such tax shall be at the rate of \$10 per annum
17 and shall be in addition to any other occupational tax im-
18 posed on such person. In the case of any person subject
19 to an occupational tax under any law of the United States,
20 the tax imposed by this section shall be levied, assessed,
21 collected, and paid in the same manner, at the same time,
22 and subject to the same provisions of law (including
23 penalties) as such other tax. In the case of a person who
24 is not subject to any occupational tax under any law of the
25 United States tax imposed by this section shall be levied,

1 assessed, collected, and paid in the same manner, at the
2 same time, and subject to the same provisions of law (in-
3 cluding penalties) as the tax imposed by paragraph "First"
4 of section 3244 of the Revised Statutes, as amended (relat-
5 ing to the tax on brewers).

6 FEDERAL ALCOHOL ADMINISTRATION

7 SEC. 2. (a) There is hereby created the Federal
8 Alcohol Administration as a division in the Treasury
9 Department.

10 (b) The Administration shall be headed by an Admin-
11 istrator, who shall be appointed by the President, by and
12 with the advice and consent of the Senate. The Admin-
13 istrator shall for his services receive compensation at the
14 rate of \$10,000 per annum, together with actual and neces-
15 sary traveling and subsistence expenses while engaged in
16 the exercise of his powers and duties outside the District
17 of Columbia. No person shall be eligible to appointment,
18 or continue in office, as Administrator if he is engaged or
19 financially interested in, or is an officer or director of or
20 employed by a corporation engaged in, the production or
21 sale or other distribution of alcoholic beverages, or the
22 financing thereof.

23 (c) The Administrator shall, without regard to the
24 civil-service laws and the Classification Act of 1923, as
25 amended, appoint and fix the compensation and duties of

1 such officers and employees as he deems necessary to carry
2 out his powers and duties, but the compensation so fixed
3 shall be subject to the approval of the Secretary of the
4 Treasury. The Administrator is authorized to adopt an
5 official seal, which shall be judicially noticed.

6 (d) The Administrator is authorized and directed to
7 prescribe such rules and regulations as may be necessary
8 to carry out his powers and duties. All rules and regula-
9 tions prescribed by the Administrator shall be subject to
10 the approval of the Secretary of the Treasury.

11 (e) Appropriations to carry out powers and duties of
12 the Administrator shall be available for expenditure, among
13 other purposes, for personal services and rent in the District
14 of Columbia and elsewhere, expenses for travel and sub-
15 sistence, for law books, books of reference, magazines,
16 periodicals, and newspapers, for contract stenographic re-
17 porting services, for subscriptions for library services, for
18 purchase of samples for analysis or use as evidence, and for
19 holding conference of State and Federal liquor control
20 officials.

21 (f) The Administrator may, with the consent of the
22 department or agency affected, utilize the services of any
23 department or other agency of the Government to the
24 extent necessary to carry out his powers and duties and
25 authorize officers and employees thereof to act as his agents.

1 (g) The provisions, including penalties, of sections 9
2 and 10 of the Federal Trade Commission Act, as now or
3 hereafter amended, shall be applicable to the jurisdiction,
4 powers, and duties of the Administrator, and to any person
5 (whether or not a corporation) subject to the provisions
6 of laws administered by the Administrator.

7 (h) The Administrator is authorized to require, in
8 such manner and form as he shall prescribe, such reports
9 as are necessary to carry out his powers and duties.

10 UNLAWFUL BUSINESSES WITHOUT PERMIT

11 SEC. 3. In order effectively to regulate interstate and
12 foreign commerce in distilled spirits, wine, and malt bev-
13 erages, to enforce the twenty-first amendment, and to
14 protect the revenue and enforce the postal laws with respect
15 to distilled spirits, wine, and malt beverages:

16 (a) It shall be unlawful, except pursuant to a basic
17 permit issued under this Act by the Administrator—

18 (1) to engage in the business of importing into
19 the United States distilled spirits, wine, or malt bev-
20 erages; or

21 (2) for any person so engaged to sell, offer or
22 deliver for sale, contract to sell, or ship, in interstate
23 or foreign commerce, directly or indirectly or through
24 an affiliate, distilled spirits, wine, or malt beverages
25 so imported.

1 This subsection shall take effect sixty days after the date of
2 the enactment of this Act.

3 (b) It shall be unlawful, except pursuant to a basic
4 permit issued under this Act by the Administrator—

5 (1) to engage in the business of distilling distilled
6 spirits, producing wine, rectifying or blending
7 distilled spirits or wine, or bottling, or warehousing and
8 bottling, distilled spirits; or

9 (2) for any person so engaged to sell, offer or
10 deliver for sale, contract to sell, or ship, in interstate or
11 foreign commerce, directly or indirectly or through an
12 affiliate, distilled spirits or wine so distilled, produced,
13 rectified, blended, or bottled, or warehoused and
14 bottled.

15 This subsection shall take effect sixty days after the date of
16 the enactment of this Act.

17 (c) It shall be unlawful, except pursuant to a basic
18 permit issued under this Act by the Administrator—

19 (1) to engage in the business of purchasing for
20 resale at wholesale distilled spirits, wine, or malt
21 beverages; or

22 (2) for any person so engaged to receive or to
23 sell, offer or deliver for sale, contract to sell, or ship,
24 in interstate or foreign commerce, directly or indirectly

1 or through an affiliate, distilled spirits, wine, or malt
2 beverages so purchased.

3 This subsection shall take effect January 1, 1936.

4 This section shall not apply to any agency of a State
5 or political subdivision thereof or any officer or employee of
6 any such agency, and no such agency or officer or employee
7 shall be required to obtain a basic permit under this Act.

PERMITS

9 SEC. 4. (a) The following persons shall, on appli-
10 cation therefor, be entitled to a basic permit:

11 (1) Any person who, on May 25, 1935, held a
12 basic permit as distiller, rectifier, wine producer,
13 or importer issued by an agency of the Federal Govern-
14 ment.

1 tions proposed to be conducted by such person are
2 in violation of the law of the State in which they
3 are to be conducted.

4 (b) If upon examination of any application for a
5 basic permit the Administrator has reason to believe that
6 the applicant is not entitled to such permit, he shall notify
7 the applicant thereof and, upon request by the applicant,
8 afford him due notice and opportunity for hearing on the
9 application. If the Administrator, after affording such
10 notice and opportunity for hearing, finds that the applicant
11 is not entitled to a basic permit hereunder, he shall by order
12 deny the application stating the findings which are the basis
13 for his order.

14 (c) The Administrator shall prescribe the manner and
15 form of all applications for basic permits (including the
16 facts to be set forth therein) and the form of all basic
17 permits, and shall specify in any basic permit the authority
18 conferred by the permit and the conditions thereof in
19 accordance with the provisions of this Act. To the extent
20 deemed necessary by the Administrator for the efficient
21 administration of this Act, separate applications and permits
22 shall be required by the Administrator with respect to
23 distilled spirits, wine, and malt beverages, and the various
24 classes thereof, and with respect to the various classes of
25 persons entitled to permits hereunder. The issuance of

1 a basic permit under this Act shall not operate to deprive
2 the United States of its remedy for any violation of law.

3 (d) A basic permit shall be conditioned upon com-
4 pliance with the requirements of section 5 (relating to
5 unfair competition and unlawful practices), with the
6 twenty-first amendment and laws relating to the enforce-
7 ment thereof, and with all other Federal laws relating to
8 distilled spirits, wine, and malt beverages, including taxes
9 with respect thereto.

10 (e) (1) No basic permit issued under this Act shall
11 contain any condition prohibiting, nor shall any rule,
12 regulation, or order, issued under this or any other Act of
13 Congress, prohibit, the use or sale of any barrel, cask, or
14 keg, if made of wood and if of one or more wine-gallons
15 capacity, as a container in which to store, transport, or
16 sell, or from which to sell, any distilled spirits, wine, or
17 malt beverages. This subsection shall not apply to any
18 condition in any basic permit issued under this Act or any
19 rule, regulation, or order issued in connection therewith to
20 the extent that such condition applies in a State in which
21 the use or sale of any such barrel, cask, or keg is prohibited
22 by the law of such State.

23 (2) It shall be unlawful for any person to package
24 or repackage distilled spirits for sale or resale in bottles
25 unless such person is a distiller, a rectifier of distilled

1 spirits, or a person operating a bonded warehouse qualified
2 under the internal revenue laws or a class 8 bonded ware-
3 house qualified under the customs laws, holding a basic
4 permit under this Act, or is a proprietor of an industrial
5 alcohol plant or is an agency of a State or political subdivi-
6 sion thereof: *Provided*, That any other person may so
7 package distilled spirits in bottles if he qualifies under the
8 internal revenue laws as a rectifier and holds a basic permit
9 issued under this Act for the rectification of distilled spirits.

10 (3) Notwithstanding the foregoing provisions of this
11 subsection, no person who is subject to the occupational tax
12 imposed by section 3244 "Fourth" of the Revised Statutes,
13 as amended (U. S. C., Supp. VII, title 26, sec. 1394 (c)),
14 on retail dealers in liquors shall package or repackage dis-
15 tilled spirits for sale or resale in bottles or be eligible to
16 qualify as a rectifier of distilled spirits, and no such person,
17 except a bona fide hotel or club, shall, for purposes of sale,
18 remove from any such barrel, cask, or keg any distilled
19 spirits contained therein. Any person who violates the pro-
20 visions of this paragraph or paragraph (2) shall, upon
21 conviction thereof, be fined not more than \$1,000 or im-
22 prisoned for not more than one year, or both, and shall
23 forfeit to the United States all distilled spirits with respect
24 to which the violation occurs, and the bottles in which
25 packaged.

15 (g) Orders of the Administrator with respect to any
16 denial of application, suspension, revocation, annulment,
17 or other proceedings, shall be served (1) in person by any
18 officer or employee of the Administration designated by
19 the Administrator or any internal revenue or customs officer
20 authorized by the Administrator for the purpose, or (2)
21 by mailing the order by registered mail, addressed to the
22 applicant or respondent at his last known address in the
23 records of the Administrator.

24 (h) A basic permit shall continue in effect until sus-
25 pended, revoked, or annulled as provided herein, or volun-

1 tarily surrendered; except that (1) if leased, sold or
2 otherwise voluntarily transferred, the permit shall be auto-
3 matically terminated thereupon, and (2) if transferred by
4 operation of law or if actual or legal control of the permittee
5 is acquired, directly or indirectly, whether by stock-owner-
6 ship or in any other manner, by any person, then such
7 permit shall be automatically terminated at the expiration
8 of thirty days thereafter: *Provided*, That if within such
9 thirty-day period application for a new basic permit is made
10 by the transferee or permittee, respectively, then the out-
11 standing basic permit shall continue in effect until such
12 application is finally acted on by the Administrator.

13 (i) An appeal may be taken by the permittee or
14 applicant for a permit from any order of the Administrator
15 denying an application for, or suspending, revoking, or
16 annulling, a basic permit. Such appeal shall be taken by
17 filing, in the circuit court of appeals of the United States
18 within any circuit wherein such person resides or has his
19 principal place of business, or in the United States Court of
20 Appeals for the District of Columbia, within sixty days after
21 the entry of such order, a written petition praying that the
22 order of the Administrator be modified or set aside in whole
23 or in part. A copy of such petition shall be forthwith
24 served upon the Administrator, or upon any officer design-
25 nated by him for that purpose, and thereupon the Admin-

1 istrator shall certify and file in the court a transcript of
2 the record upon which the order complained of was entered.
3 Upon the filing of such transcript such court shall have
4 exclusive jurisdiction to affirm, modify, or set aside such
5 order, in whole or in part. No objection to the order of
6 the Administrator shall be considered by the court unless
7 such objection shall have been urged before the Adminis-
8 trator or unless there were reasonable grounds for failure
9 so to do. The finding of the Administrator as to the facts,
10 if supported by substantial evidence, shall be conclusive.
11 If any party shall apply to the court for leave to adduce
12 additional evidence, and shall show to the satisfaction of
13 the court that such additional evidence is material and that
14 there were reasonable grounds for failure to adduce such
15 evidence in the proceeding before the Administrator, the
16 court may order such additional evidence to be taken before
17 the Administrator and to be adduced upon the hearing in
18 such manner and upon such terms and conditions as to the
19 court may seem proper. The Administrator may modify
20 his findings as to the facts by reason of the additional evi-
21 dence so taken, and he shall file with the court such mod-
22 ified or new findings, which, if supported by substantial
23 evidence, shall be conclusive, and his recommendation, if
24 any, for the modification or setting aside of the original
25 order. The judgment and decree of the court affirming,

1 modifying, or setting aside, in whole or in part, any such
2 order of the Administrator shall be final, subject to review
3 by the Supreme Court of the United States upon certiorari
4 or certification as provided in sections 239 and 240 of the
5 Judicial Code, as amended (U. S. C., title 28, secs. 346
6 and 347). The commencement of proceedings under this
7 subsection shall, unless specifically ordered by the court,
8 operate as a stay of the Administrator's order.

9 (j) No proceeding for the suspension or revocation of
10 a basic permit for violation of any condition thereof relating
11 to compliance with Federal law shall be instituted by the
12 Administrator more than eighteen months after conviction
13 of the violation of Federal law, or, if no conviction has been
14 had, more than three years after the violation occurred;
15 and no basic permit shall be suspended or revoked for a
16 violation of any such condition thereof if the alleged viola-
17 tion of Federal law has been compromised by any officer of
18 the Government authorized to compromise such violation.

19 UNFAIR COMPETITION AND UNLAWFUL PRACTICES

20 SEC. 5. It shall be unlawful for any person engaged in
21 business as a distiller, brewer, rectifier, blender, or other
22 producer, or as an importer or wholesaler, of distilled spirits,
23 wine, or malt beverages, or as a bottler, or warehouseman
24 and bottler, of distilled spirits, directly or indirectly or
25 through an affiliate:

1 (a) Exclusive outlet: To require, by agreement or
2 otherwise, that any retailer engaged in the sale of distilled
3 spirits, wine, or malt beverages, purchase any such products
4 from such person to the exclusion in whole or in part of dis-
5 tilled spirits, wine, or malt beverages sold or offered for
6 sale by other persons in interstate or foreign commerce, if
7 such requirement is made in the course of interstate or for-
8 eign commerce, or if such person engages in such practice
9 to such an extent as substantially to restrain or prevent
10 transactions in interstate or foreign commerce in any such
11 products, or if the direct effect of such requirement is to
12 prevent, deter, hinder, or restrict other persons from selling
13 or offering for sale any such products to such retailer in
14 interstate or foreign commerce; or

15 (b) "Tied house": To induce through any of the
16 following means, any retailer, engaged in the sale of distilled
17 spirits, wine, or malt beverages, to purchase any such prod-
18 ucts from such person to the exclusion in whole or in part
19 of distilled spirits, wine, or malt beverages sold or offered
20 for sale by other persons in interstate or foreign commerce,
21 if such inducement is made in the course of interstate or
22 foreign commerce, or if such person engages in the practice
23 of using such means, or any of them, to such an extent as
24 substantially to restrain or prevent transactions in inter-
25 state or foreign commerce in any such products, or if the

1 direct effect of such inducement is to prevent, deter, hinder,
2 or restrict other persons from selling or offering for sale any
3 such products to such retailer in interstate or foreign com-
4 merce: (1) By acquiring or holding (after the expiration
5 of any existing license) any interest in any license with
6 respect to the premises of the retailer; or (2) by acquiring
7 any interest in any premises of the retailer; or (3) by fur-
8 nishing, giving, renting, lending, or selling to the retailer,
9 any equipment, fixtures, signs, supplies, money, or other
10 thing of value, subject to such exceptions as the Adminis-
11 trator shall by regulation prescribe, having due regard for
12 public health, the quantity and value of articles involved,
13 established trade customs not contrary to the public interest
14 and the purposes of this subsection; or (4) by paying
15 or crediting the retailer for any advertising, display, or
16 distribution service; or (5) by guaranteeing any loan or
17 the repayment of any financial obligation of the retailer;
18 or (6) by extending to the retailer credit for a period in
19 excess of the credit period usual and customary to the in-
20 dustry for the particular class of transactions, as ascertained
21 by the Administrator and prescribed by regulations by
22 him; or

23 (c) Commercial bribery: To induce through any of
24 the following means, any trade buyer engaged in the sale
25 of distilled spirits, wine, or malt beverages, to purchase

1 any such products from such person to the exclusion in
2 whole or in part of distilled spirits, wine, or malt beverages
3 sold or offered for sale by other persons in interstate or
4 foreign commerce, if such inducement is made in the course
5 of interstate or foreign commerce, or if such person engages
6 in the practice of using such means, or any of them, to such
7 an extent as substantially to restrain or prevent transactions
8 in interstate or foreign commerce in any such products, or
9 if the direct effect of such inducement is to prevent, deter,
10 hinder, or restrict other persons from selling or offering for
11 sale any such products to such trade buyer in interstate or
12 foreign commerce: (1) By commercial bribery; or (2)
13 by offering or giving any bonus, premium, or compensation
14 to any officer, or employee, or representative of the trade
15 buyer; or

16 (d) Consignment sales: To sell, offer for sale, or
17 contract to sell to any trade buyer engaged in the sale of
18 distilled spirits, wine, or malt beverages, or for any such
19 trade buyer to purchase, offer to purchase, or contract to
20 purchase, any such products on consignment or under con-
21 ditional sale or with the privilege of return or on any basis
22 otherwise than a bona fide sale, or where any part of such
23 transaction involves, directly or indirectly, the acquisition
24 by such person from the trade buyer or his agreement to
25 acquire from the trade buyer other distilled spirits, wine,

1 or malt beverages—if such sale, purchase, offer, or contract
2 is made in the course of interstate or foreign commerce, or
3 if such person or trade buyer engages in such practice to
4 such an extent as substantially to restrain or prevent trans-
5 actions in interstate or foreign commerce in any such prod-
6 ucts, or if the direct effect of such sale, purchase, offer, or
7 contract is to prevent, deter, hinder, or restrict other persons
8 from selling or offering for sale any such products to such
9 trade buyer in interstate or foreign commerce; or

10 (e) Labeling.—To sell or ship or deliver for sale or
11 shipment, or otherwise introduce in interstate or foreign
12 commerce, or to receive therein, or to remove from customs
13 custody for consumption, any distilled spirits, wine, or malt
14 beverages in bottles, unless such products are bottled, pack-
15 aged, and labeled in conformity with such regulations, to
16 be prescribed by the Administrator, with respect to pack-
17 aging, marking, branding, and labeling and size and fill of
18 container (1) as will prohibit deception of the consumer
19 with respect to such products or the quantity thereof and
20 as will prohibit, irrespective of falsity, such statements relat-
21 ing to age, manufacturing processes, analyses, guarantees,
22 and scientific or irrelevant matters as the Administrator
23 finds to be likely to mislead the consumer; (2) as will
24 provide the consumer with adequate information as to the
25 identity and quality of the products, the alcoholic content

1 thereof, except that statements of, or statements likely to be
2 considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by State law and
3 except that, in case of wines, statements of alcoholic content
4 shall be required only for wines containing more than 14 per
5 centum of alcohol by volume), the net contents of the pack-
6 age, and the manufacturer or bottler or importer of the
7 product; (3) as will require an accurate statement, in the
8 case of distilled spirits (other than cordials, liqueurs, and
9 specialties) produced by blending or rectification if neutral
10 spirits have been used in the production thereof, informing
11 the consumer of the percentage of neutral spirits so used and
12 of the name of the commodity from which such neutral spirits
13 have been distilled; (4) as will prohibit statements on the
14 label that are disparaging of a competitor's products or are
15 false, misleading, obscene, or indecent; and (5) as will prevent
16 deception of the consumer by use of a trade or brand name
17 that is the name of any living individual of public prominence,
18 or existing private or public organization, or is a
19 name that is in simulation or is an abbreviation thereof,
20 and as will prevent the use of a graphic, pictorial, or
21 emblematic representation of any such individual or organ-
22 ization, if the use of such name or representation is likely
23 falsely to lead the consumer to believe that the product
24 has been indorsed, made, or used by, or produced for, or

1 under the supervision of, or in accordance with the specific-
2 cations of, such individual or organization: *Provided*, That
3 this clause shall not apply to the use of the name of any
4 person engaged in business as a distiller, brewer, rectifier,
5 blender, or other producer, or as an importer, wholesaler,
6 retailer, bottler, or warehouseman, of distilled spirits, wine,
7 or malt beverages, nor to the use by any person of a trade
8 or brand name used by him or his predecessor in interest
9 prior to the date of the enactment of this Act; including
10 regulations requiring, at time of release from customs
11 custody, certificates issued by foreign governments covering
12 origin, age, and identity of imported products. No person
13 shall remove from Government custody after purchase at
14 any Government sale any distilled spirits, wine, or malt
15 beverages in bottles to be held for sale, until such bottles
16 are packaged, marked, branded, and labeled in conformity
17 with the requirements of this subsection.

18 It shall be unlawful for any person to alter, mutilate,
19 destroy, obliterate, or remove any mark, brand, or label
20 upon distilled spirits, wine, or malt beverages held for sale
21 in interstate or foreign commerce or after shipment therein,
22 except as authorized by Federal law or except pursuant to
23 regulations of the Administrator authorizing relabeling for
24 purposes of compliance with the requirements of this sub-
25 section or of State law.

1 In order to prevent the sale or shipment or other intro-
2 duction of distilled spirits, wine, or malt beverages in inter-
3 state or foreign commerce, if bottled, packaged, or labeled
4 in violation of the requirements of this subsection, no bottler,
5 or importer of distilled spirits, wine, or malt beverages,
6 shall, after such date as the Administrator fixes as the earliest
7 practicable date for the application of the provisions of
8 this subsection to any class of such persons (but not later
9 than January 1, 1936, and only after thirty days' public
10 notice), bottle or remove from customs custody for con-
11 sumption distilled spirits, wine, or malt beverages, respec-
12 tively, unless the bottler or importer, upon application to
13 the Administrator, has obtained and has in his possession
14 a certificate of label approval covering the distilled spirits,
15 wine, or malt beverages, issued by the Administrator in
16 such manner and form as he shall by regulations prescribe:
17 *Provided*, That any such bottler shall be exempt from the
18 requirements of this subsection if the bottler, upon applica-
19 tion to the Administrator, shows to the satisfaction of
20 the Administrator that the distilled spirits, wine, or malt
21 beverages to be bottled by the applicant are not to be sold,
22 or offered for sale, or shipped or delivered for shipment,
23 or otherwise introduced, in interstate or foreign commerce.
24 Officers of internal revenue and customs are authorized and
25 directed to withhold the release of such products from the

1 bottling plant or customs custody unless such certificates
2 have been obtained, or unless the application of the bottler
3 for exemption has been granted by the Administrator. The
4 district courts of the United States, the Supreme Court of
5 the District of Columbia, and the United States court for any
6 Territory, shall have jurisdiction of suits to enjoin, annul, or
7 suspend in whole or in part, any final action by the Admin-
8 istrator upon any application under this subsection; or

9 (f) Advertising: To publish or disseminate or cause
10 to be published or disseminated by radio broadcast, or in
11 any newspaper, periodical or other publication or by any
12 sign or outdoor advertisement or any other printed or
13 graphic matter, any advertisement of distilled spirits, wine,
14 or malt beverages, if such advertisement is in, or is calculated
15 to induce sales in, interstate or foreign commerce, or is dis-
16 seminated by mail, unless such advertisement is in con-
17 formity with such regulations, to be prescribed by the Ad-
18 ministrator, (1) as will prevent deception of the consumer
19 with respect to the products advertised and as will prohibit,
20 irrespective of falsity, such statements relating to age, manu-
21 facturing processes, analyses, guaranties, and scientific or
22 irrelevant matters as the Administrator finds to be likely to
23 mislead the consumer; (2) as will provide the consumer
24 with adequate information as to the identity and quality of
25 the products advertised, the alcoholic content thereof (except

1 that statements of, or statements likely to be considered as
2 statements of, alcoholic content of malt beverages are pro-
3 hibited and except that, in case of wines, statements of al-
4 coholic content shall be required only for wines containing
5 more than 14 per centum of alcohol by volume), and the
6 person responsible for the advertisement; (3) as will
7 require an accurate statement, in the case of distilled
8 spirits (other than cordials, liqueurs, and specialties) pro-
9 duced by blending or rectification if neutral spirits have
10 been used in the production thereof, informing the con-
11 sumer of the percentage of neutral spirits so used and
12 of the name of the commodity from which such neutral
13 spirits have been distilled; (4) as will prohibit state-
14 ments that are disparaging of a competitor's products or
15 are false, misleading, obscene, or indecent; (5) as will
16 prevent statements inconsistent with any statement on the
17 labeling of the products advertised. This subsection shall
18 not apply to outdoor advertising in place on the date of
19 the enactment of this Act, but shall apply upon replace-
20 ment, restoration, or renovation of any such advertising.

21 The provisions of subsections (a), (b), and (c) shall
22 not apply to any act done by an agency of a State or
23 political subdivision thereof, or by any officer or employee
24 of such agency.

1 The Administrator shall give reasonable public notice.
2 and afford to interested parties opportunity for hearing.
3 prior to prescribing regulations to carry out the provisions
4 of this section.

5 PENALTIES

6 SEC. 6. The District Courts of the United States, the
7 Supreme Court of the District of Columbia, and the United
8 States Court for any Territory, of the District where the
9 offense is committed or threatened or of which the offender
10 is an inhabitant or has his principal place of business, are
11 hereby vested with jurisdiction of any suit brought by
12 the Attorney General in the name of the United States,
13 to prevent and restrain violations of any of the provisions
14 of this Act. Any person violating any of the provisions
15 of sections 3 or 5 shall be guilty of a misdemeanor and
16 upon conviction thereof be fined not more than \$1,000 for
17 each offense. Subject to the approval of the Attorney
18 General, the Administrator is authorized, prior to com-
19 mencement of court proceedings with respect to any vi-
20 lation of this Act, to compromise the liability arising with
21 respect to such violation (1) upon payment of a sum not
22 in excess of \$500 for each offense, to be collected by the
23 Administrator and to be paid into the Treasury as misce-
24 laneous receipts, and (2) in case of repetitious violations
25 and in order to avoid multiplicity of criminal proceedings,

1 upon agreement to a stipulation that the United States
2 may, on its own motion upon five days' notice to the viola-
3 tor, cause a consent decree to be entered by any court of
4 competent jurisdiction enjoining the repetition of such
5 violation.

INTERLOCKING DIRECTORATES

7 SEC. 7. (a) Except as provided in subsection (b),
8 it shall be unlawful for any individual to take office, after
9 the date of the enactment of this Act, as an officer or director
10 of any company, if his doing so would make him an officer
11 or director of more than one company engaged in business
12 as a distiller, rectifier, or blender of distilled spirits, or of
13 any such company and of a company which is an affiliate
14 of any company engaged in business as a distiller, rectifier,
15 or blender of distilled spirits, or of more than one company
16 which is an affiliate of any company engaged in business
17 as a distiller, rectifier, or blender of distilled spirits, unless,
18 prior to taking such office, application made by such indi-
19 vidual to the Administrator has been granted and after due
20 showing has been made to him that service by such individual
21 as officer or director of all the foregoing companies of which
22 he is an officer or director together with service in the
23 company with respect to which application is made will not
24 substantially restrain or prevent competition in interstate
25 or foreign commerce in distilled spirits. The Administrator

1 shall, by order, grant or deny such application on the basis
2 of the proof submitted to him and his finding thereon. The
3 District Courts of the United Staes, the Supreme Court of
4 the District of Columbia, and the United States courts for
5 any Territory shall have jurisdiction of suits to enjoin, annul,
6 or suspend any final action by the Administrator upon any
7 application under this subsection.

8 (b) An individual may, without regard to the provi-
9 sions of subsection (a), take office as an officer or director
10 of a company described in subsection (a) while holding
11 the position of officer or director of any other such company
12 if such companies are affiliates at the time of his taking
13 office and if—

14 (1) Such companies are affiliates on the date of
15 the enactment of this Act; or

16 (2) Each of such companies has been organized
17 under the law of a State to comply with a requirement
18 thereof under which, as a condition of doing business
19 in such State, such company must be organized under
20 the law of such State; or

21 (3) One or more such companies has been organ-
22 ized under the law of a State to comply with a require-
23 ment thereof under which, as a condition of doing
24 business in such State, such company must be organ-

1 ized under the laws of such State, and the other one
2 or more of such companies not so organized, is in
3 existence on the date of the enactment of this Act; or

4 (4) One or more of such companies has been
5 organized under the law of a State to comply with a
6 requirement thereof under which, as a condition of
7 doing business in such State, such company must be
8 organized under the law of such State, and not more
9 than one of such companies is a company which has
10 not been so organized and which has been organized
11 after the date of the enactment of this Act.

12 (c) As used in this section, the term "company"
13 means a corporation, joint stock company, business trust,
14 or association, but does not include any agency of a State
15 or political subdivision thereof or any officer or employee
16 of any such agency.

17 (d) Any individual taking office in violation of this
18 section shall be punished by a fine of not exceeding \$1,000.

19 FEDERAL ALCOHOL CONTROL ADMINISTRATION

20 SEC. 8. The Federal Alcohol Control Administration
21 established by Executive order under the provisions of
22 Title I of the National Industrial Recovery Act is hereby
23 abolished. All papers, records, and property of such Fed-
24 eral Alcohol Control Administration are hereby transferred

1 to the Administrator. This section shall take effect on the
2 date that the Administrator first appointed under this Act
3 takes office.

4 MISCELLANEOUS

5 SEC. 9. (a) As used in this Act—

6 (1) The term “Administrator” means the head
7 of the Federal Alcohol Administration.

8 (2) The term “United States” means the sev-
9 eral States and Territories and the District of Colum-
10 bia; the term “State” includes a Territory and the
11 District of Columbia; and the term “Territory” means
12 Alaska, Hawaii, and Puerto Rico.

13 (3) The term “interstate or foreign commerce”
14 means commerce between any State and any place
15 outside thereof, or commerce within any Territory or
16 the District of Columbia, or between points within
17 the same State but through any place outside thereof.

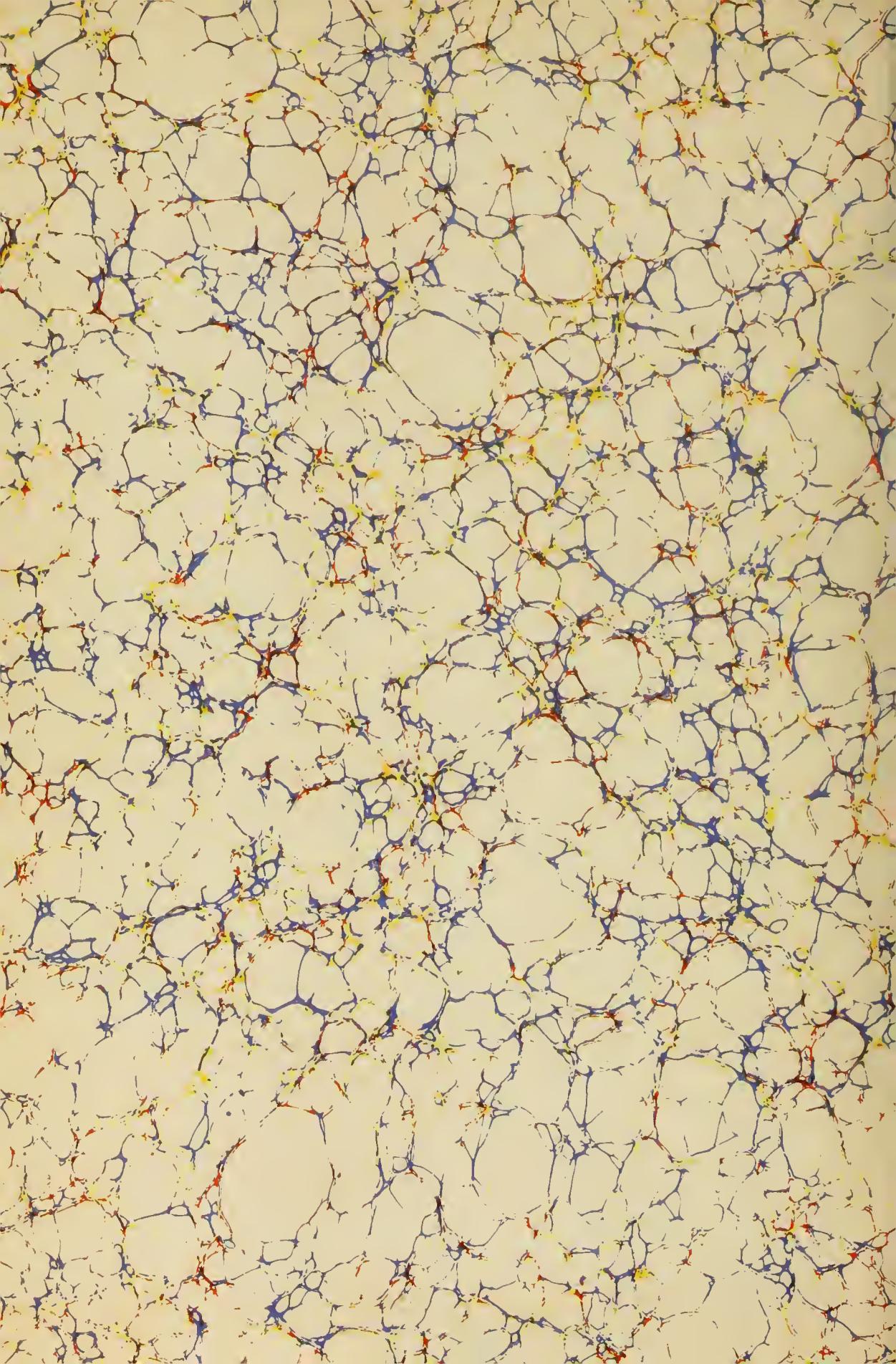
18 (4) The term “person” means individual, part-
19 nership, joint stock company, business trust, associa-
20 tion, corporation, or other form of business enterprise,
21 including a receiver, trustee, or liquidating agent and
22 including an officer or employee of any agency of a
23 State or political subdivision thereof; and the term
24 “trade buyer” means any person who is a wholesaler
25 or retailer.

1 (8) The term "malt beverage" means a bev-
2 erage made by the alcoholic fermentation of an infusion
3 or decoction, or combination of both, in potable brew-
4 ing water, of malted barley with hops, or their parts,
5 or their products, and with or without other malted
6 cereals, and with or without the addition of unmalted
7 or prepared cereals, other carbohydrates or products
8 prepared therefrom, and with or without the addition
9 of carbon dioxide, and with or without other whole-
10 some products suitable for human food consumption.

15 (b) The right to amend or repeal the provisions of
16 this Act is expressly reserved.

17 (c) If any provision of this Act, or the application
18 of such provision to any person or circumstance, is held
19 invalid, the remainder of the Act and the application of such
20 provision to persons or circumstances other than those as
21 to which it is held invalid, shall not be affected thereby.

22 (d) This Act may be cited as the "Federal Alcohol
23 Administration Act".



Legis.Hist.
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Pt.3

Federal alcohol
administration
act, 1935.

Legis.Hist.
P.L.74-407
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